

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**AMANDA BOSARGE, ET AL.**

**PLAINTIFFS**

**VS.**

**Civil Action No. 1:22-cv-00233-HSO-BWR**

**DANIEL P. EDNEY, in his official capacity  
as the State Health Officer, ET AL.**

**DEFENDANTS**

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**DEFENDANT ATTORNEY GENERAL LYNN FITCH’S MOTION  
TO DENY OR CONTINUE OR, ALTERNATIVELY, TO STAY OR HOLD IN  
ABEYANCE, PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT [DKT. #4]**

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COMES NOW Defendant Lynn Fitch, in her official capacity as Attorney General of Mississippi, (“the Attorney General”) by and through counsel, and pursuant to Rules 7 and 56(d), *Federal Rules of Civil Procedure*, files this her motion to deny or continue or, alternatively, to stay or hold in abeyance, Plaintiffs’ motion for summary judgment [Dkt. #4], and in support thereof would show unto the Court the following:

1. Pursuant to FED. R. CIV. P. 56(d), the Court should deny or continue Plaintiffs’ premature motion for summary judgment because the Attorney General has had no opportunity or ability to conduct any discovery at all.

2. The day after filing their complaint, Plaintiffs filed a motion for summary judgment asking this Court to declare Mississippi’s school vaccination statute unconstitutional. Plaintiffs insist that the Court proceed to consider their dispositive motion now.

3. This case is in its infancy. The Attorney General filed her answer on November 16, 2022. Contemporaneous with the filing of this motion, the Attorney General is timely filing (1) her response in opposition to Plaintiffs’ combined motion for a preliminary injunction and

motion to consolidate the preliminary injunction hearing with a trial on the merits; and (2) a motion for judgment on the pleadings or, alternatively, to dismiss or stay pursuant to the *Pullman* abstention doctrine. At the time this motion is filed, no Rule 16 initial order has been entered, no Rule 26(f) attorney conference has occurred, and no case management order has been entered. Consequently, none of the defendants has had any opportunity or ability to conduct any discovery at all regarding the factual basis for Plaintiffs' First Amendment claim. Plaintiffs' motion for summary judgment is accordingly premature and should be denied or continued.

4. Alternatively, the Court should stay or hold in abeyance Plaintiffs' motion for summary judgment pending a ruling on other filed motions.

5. The Attorney General adopts and incorporates by reference, as if fully and completely set forth herein, the arguments and authorities set forth in the *Memorandum of Authorities in Support of Defendant Attorney General Lynn Fitch's Motion to Deny or Continue or, Alternatively, to Stay or Hold in Abeyance, Plaintiffs' Motion for Summary Judgment [Dkt. #4]*, being filed contemporaneously herewith.

6. On the basis of the grounds asserted herein and as further set forth in the aforementioned memorandum of authorities, Plaintiffs motion for summary judgment is premature and should either be denied or continued pursuant to FRCP 56(d) or, alternatively, stayed or held in abeyance pending a ruling on other filed motions.

7. The Attorney General files this motion in an abundance of caution in the event the Court is not inclined to grant the Attorney General's motion for judgment on the pleadings or, alternatively, to dismiss or stay pursuant to the *Pullman* abstention doctrine, being filed contemporaneously herewith. Nothing in the instant Rule 56(d) motion should be construed as a waiver of the arguments set forth in the aforementioned separately-filed motion.

8. In further support of her motion, the Attorney General submits the following:

Exhibit “A” Rule 56(d) Affidavit of Counsel

Exhibit “B” 11/02/2022 E-mail from Siri to Shannon

Exhibit “C” 11/03/2022 E-mail from Shannon to Siri

Exhibit “D” 11/03/2022 E-mail from Siri to Shannon

**WHEREFORE, PREMISES CONSIDERED,** Defendant Lynn Fitch, in her official capacity as Attorney General of Mississippi, respectfully requests that the Court make and enter its Order (1) granting the Attorney General’s Rule 56(d) motion to deny or continue Plaintiffs’ motion for summary judgment [Dkt. #4], and (a) denying Plaintiffs’ motion for summary judgment without prejudice, or (b) continuing Plaintiffs’ motion for summary judgment until such time as the Attorney General has had a reasonable opportunity to conduct discovery in this matter; or, alternatively (2) granting the Attorney General’s motion to stay or hold in abeyance Plaintiffs’ motion for summary judgment [Dkt. #4] pending a ruling on other filed motions, with a reasonable and orderly briefing schedule to be established at that time should it become necessary for the Court to adjudicate Plaintiffs’ motion for summary judgment. The Attorney General respectfully requests that the Court award the Attorney General any other relief the Court may deem just and appropriate under the circumstances.

THIS the 21st day of November, 2022.

Respectfully submitted,

LYNN FITCH, IN HER OFFICIAL CAPACITY  
AS ATTORNEY GENERAL OF MISSISSIPPI,  
DEFENDANT

By: LYNN FITCH, ATTORNEY GENERAL  
STATE OF MISSISSIPPI

By: s/Rex M. Shannon III  
REX M. SHANNON III (MSB #102974)  
Special Assistant Attorney General

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ATTORNEYS FOR DEFENDANT LYNN FITCH, IN HER OFFICIAL CAPACITY AS  
ATTORNEY GENERAL OF MISSISSIPPI

**CERTIFICATE OF SERVICE**

I, Rex M. Shannon III, Special Assistant Attorney General and attorney for Defendant Lynn Fitch, in her official capacity as Attorney General of Mississippi, do hereby certify that I have this date caused to be filed with the Clerk of the Court a true and correct copy of the above and foregoing via the Court's ECF filing system, which sent notification of such filing to all counsel of record.

THIS the 21st day of November, 2022.

s/Rex M. Shannon III  
REX M. SHANNON III